

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

STANFORD T. ALLEN, JR.,

Plaintiff,

v.

CIVIL ACTION NO. 1:06-0597

DAVID BALLARD, Warden,

Defendant.

RULE 24 ORDER

Pursuant to Rule 24 of the Federal Rules of Appellate Procedure, plaintiff's motion to proceed on appeal in forma pauperis is DENIED.

In his objections, plaintiff made three arguments:

1) that when the court reviews the record it will conclude that plaintiff was innocent of the crime; 2) that the court should order the recusal of Magistrate Judge VanDervort because he has a conflict of interest; and 3) that he was convicted under a counterfeit indictment. For the reasons discussed in the court's order overruling his objections, the court finds these grounds to be frivolous. Therefore, plaintiff's appeal is not taken in good faith.

As to plaintiff's first objection, the court found that plaintiff is not entitled to habeas relief. To the extent that plaintiff's "innocence" objection went to the sufficiency of the

evidence used to convict him, plaintiff withdrew that ground for habeas relief.

Plaintiff also argued that Magistrate Judge VanDervort has a conflict of interest requiring recusal. Recusal is not warranted in this case. Based on the evidence of record, no person with knowledge of the relevant facts could "reasonably" question Magistrate Judge VanDervort's impartiality in this matter.

Plaintiff's final objection goes to the indictment. The indictment in this case appears to be in order.

The Clerk is directed to send a copy of this Order to counsel of record and to plaintiff, pro se.

IT IS SO ORDERED this 20th day of March, 2009.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge